

RESOURCES TRANSFER OF ASSETS

ANNUITIES

Description: An annuity is contract with a life insurance company, designed to provide payments on a regular basis either for life or a term of years.

Policy: As a condition of eligibility, effective August 1, 2006, all persons applying for Medicaid coverage of nursing facility services, including requests for an increase in coverage for nursing facility services, must disclose a description of any interest he/she, or his/her spouse, may have in an annuity. The disclosure of interest in an annuity is required regardless of whether the annuity is irrevocable or counted as a resource. Additionally, for annuities purchased by the A/R or the A/R's spouse on or after February 8, 2006, regardless of whether the annuity is irrevocable or treated as an asset, the State must be named as a remainder beneficiary in the first position for at least the amount of Medicaid paid on behalf of the institutionalized individual. In cases where there is a community spouse or minor or disabled child of any age, the State must be named the remainder beneficiary in the second position or named in the first position if such spouse or representative of such child disposes of any such remainder for less than fair market value.

The social services district must require a copy of the annuity contract owned by the A/R or the A/R's spouse in order to verify that the State has been named the remainder beneficiary. If the A/R or the A/R's spouse fails or refuses to provide the necessary documentation, the district must treat the purchase of the annuity as a transfer of assets for less than fair market value.

Individuals who are applying for or receiving care, services or supplies pursuant to a waiver under subsection (c) or (d) of Section 1915 of the Social Security Act (SSA) are **not** subject to these requirements regarding annuities. In New York, such waiver services are provided through the Long Term Home Health Care Program (LTHHCP), Traumatic Brain Injury Waiver Program (TBI), Care at Home Program (CAH), the Office of Mental Retardation and Developmental Disabilities (OMRDD) Home and Community-Based Services (HCBS) Waiver, and Home and Community-Based Services Waiver for Children with Serious Emotional Disturbance (Office of Mental Health [OMH]).

NOTE: Treatment of annuities for Partnership policy/certificate holders with Total Asset Protection OR Dollar for Dollar Asset Protection plans is discussed in RESOURCES New York State Partnership for Long Term Care.

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References:	SSL Sect.	366-a (2) 366 366-c
	Dept. Reg.	360-2.3 360-4.4 360-4.6
	ADMs	06 OMM/ADM-5 06 OMM/ADM-2 04 OMM/ADM-6 96 OMM/ADM-8
	GIS	07 MA/020 07 MA/018 07 MA/011 06 MA/016

Interpretation: The purchase of an annuity that does not name the State as a remainder beneficiary in the first position (or in the second position as explained above) will be treated as an uncompensated transfer of assets. In addition, if an annuity is purchased by or on behalf of an A/R, the purchase will be treated as a transfer of assets for less than fair market value unless the annuity is:

- An annuity described in subsection (b) or (q) of Section 408 of the Internal Revenue Code of 1986; or
- Purchased with the proceeds from an account or trust, described in subsection (a), (c), or (p) of Section 408 of such Code; a simplified employee pension (within the meaning of Section 408 (k) of such Code); or a Roth IRA described in Section 408A of such Code; or

The annuity is:

- Irrevocable and non-assignable;
- Is actuarially sound (as determined in accordance with actuarial publications of the Office of the Chief Actuary of the Social Security Administration); **AND**
- Provides for payments in equal amounts during the term of the annuity with no deferral and no balloon payments made.

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NOTE: These provisions apply to transactions, including purchases which occur on or after February 8, 2006. Transactions subject to these provisions include any action by the individual that changes the course of payment from the annuity or that changes the treatment of the income or principal of the annuity. These transactions include additions of principal, elective withdrawals, requests to change the distribution of the annuity, elections to annuitize the contract and similar actions.